IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.14 OF 2006

M/s.Ekvira Developers, a partnership firm through partners Anil D. Tendulkar and others .. Petitioners

versus

M/s.Sadhana Nitrochem Ltd. & Anr. .. Respondents

...

Ms.Gauri Godse for the petitioners.

Mr.Padgaonkar with Mr.P. Colabawala i/b M/s.Mulla & Mulla for the respondent no.1.

CORAM : D.G. KARNIK, J

DATED : 13th September 2006

P.C.:

1. Heard learned counsel for the parties.

2. This Revision Application is directed against the order dated 7th January 2006 passed on Exhibit nos.41 and 42 in the Execution Petition (Regular

Darkhast No.6 of 2005).

3. Respondent no.1 filed a suit bearing Regular Civil Suit no.49 of 1994 against respondent no.2 for possession of the suit property. The suit was initially dismissed. However Appeal no.82 of 2003 filed by respondent no.1 was allowed and a decree for possession was passed. Respondent no.1 put the decree for execution by filing an Execution Petition (Regular Darkhast) No.6 of 2005

4. In the Execution Petition, the present petitioner appeared and filed an application at Exhibit 32 objecting to the execution of the decree. Soon thereafter on 4th October 2005, he filed another application at Exhibit 41 stating that he had applied to the District Inspector of Land Records for measurement of the land and pending the said measurements, the execution proceedings be stayed. It appears that on the same day, the respondent no.1 recorded his objection for stay of the darkhast for writing his objection cum say on the back side of the petitioner’s application. The petitioner thereafter made another application (Exhibit-42) alleging that his previous application at Exhibit-32 was in the nature of

obstruction and since the respondent had not made an application for removal of the obstruction within 30 days, the execution proceedings should be dismissed. Applications at Exhibit-41 and 42 were heard together by the impugned order dated 7th January 2006. The learned Judge rejected the applications at Exhibit 41 and 42 and directed the petitioner to produce evidence on his first application at exhibit-32. That order is impugned in this petition.

5. It is worthwhile to note that the Court has not decided the petitioners application at Exhibit-32, which the petitioner claims to be in the nature of obstruction. The Court has directed only the petitioner to adduce evidence in support of his application at Exhibit-32. Since the application at Exhibit-32 is pending before the trial court, I decline to express any opinion on the nature of the application at Exhibit-32. The trial court would, undoubtedly, consider and decide whether the application (Exhibit-32) is in the nature of an obstruction within the meaning of Order 21 Rule 97 of the Code of Civil Procedure. In fact, the trial Judge has directed the petitioner to adduce evidence on Exhibit-32. Instead of doing so he has chosen to file this revision

petition.

6. In my view, the revision petition is totally misconceived. By making an application at Exhibit-41, petitioner prayed that the execution proceedings should be stayed pending hearing of the application for measurement of the land. By Exhibit-42, he prayed that darkhast should be dismissed as proper steps have not been taken for removal of the obstruction without first considering the nature and effect of the petitioner's earlier application at Ex.32 the executing court could not have dismissed the darkhast. Learned Judge was right in rejecting an application (Exhibit-41) for stay of the execution; the learned Judge was also right in rejecting an application (Exhibit-42) and fixing the petitioner's application at Exhibit-32 for hearing.

7. For these reasons there is no merit in the revision application which is hereby dismissed summarily.

(D.G. KARNIK, J)